

On Risk & Responsibility: Gun Control and the Ethics of Hunting

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Abstract

This article explores gun control and the ethics of hunting and suggests that hunting ought not to be permitted, and not because of its impact on those animals that are hunted, but because of the risk other humans are subjected to as a result of some being permitted to own guns for mere preference satisfaction. This article examines the nature of freedom, its value, and how responsibility for the exercising of that freedom ought to be regarded when it involves subjecting others to a risk of grave bodily harm. A distinction between two kinds of freedom is put forth and it is argued that it would be wrong to sacrifice freedoms of intrinsic worth for freedoms of instrumental worth.

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INTRODUCTION

In what follows, I engage in a three-pronged criticism of various claims suggesting that owning a gun for the purpose of hunting is permissible. The primary thrust of this article is the conclusion that because others' bodily health is put at risk by owning a gun, responsibility for that risk needs to be properly attributed to the gun owner. Furthermore, I suggest that because the risk being introduced involves bodily harm of such a grave magnitude, that gun owners ought not to be free to introduce that risk into others' lives.

Prior to arriving at this conclusion concerning risk and responsibility, I begin with two brief examinations. I focus first, on hunting as a means of preventing both undesirable populations from occupying an area, as well as superabundance in the absence of natural predators. Second, I examine the Second Amendment of the United States Constitution as a segue into the main purpose of the paper.

WHY HUNTING?

Hunting is seen by many as not only a sport that one might derive pleasure from, but also as a necessity in our modern society. As urban centers increasingly expand to accommodate growing populations, wild animals threaten to infringe upon our ability to live our lives as we desire. Roads become less safe as we have to travel through the natural habitat of deer and other large mammals that can cause life-taking vehicle accidents. Our pets and children become less safe because of predatory animals living so close to homes. Hunting is seen as a necessity to protect us and our families and to ensure populations of animals do not grow to sizes that magnify the problems mentioned

above to no longer be mere nuisances, but to instead, genuinely unmanageable situations. Many people argue that we must hunt to control populations and to prevent undesirable animals from threatening us.

While it is undeniable that some species of animals are growing at unsustainable ratesⁱ and that we are subjecting ourselves to potentially dangerous animals as we inhabit more and more territory, I do not think we can move so quickly to suggest that sport hunting is the solution.

First, the reason we have become so burdened by wild animals is because of our own actions. We have removed undesirable populations of animals from where we would like to live and spend leisure time, and thus impacted other populations of animals because of a lack of natural predators.ⁱⁱ This is often cited as an explanation for the dramatic growth in deer populations in North America.

That said, because we ought to be held accountable for the problems we now face, we must be more responsible in the establishing of solutions. First, the primary cause of extinction worldwide is loss of habitat. Peter Wenz argues, “people have disrupted areas that animals depend on for food, shelter, mating, or spawning.”ⁱⁱⁱ We are responsible for the removal of natural predators and the extinction that has either happened, or threatens to happen. Because we are responsible for this, our solution cannot simply be to kill

ⁱ This problem is not one to take lightly. In “Hunting Helps Animal Conservation,” in *Animal Rights: Opposing Viewpoints*, ed. Janelle Rohr (San Diego: Greenhaven Press, 1989), 159, it was suggested that since 1900 the total population of whitetail deer has increased from approximately 500,000 to more than 16 million.

ⁱⁱ Peter Wenz, *Environmental Ethics Today* (Oxford: Oxford University Press, 2001), 146-166.

ⁱⁱⁱ *Ibid.*, 127.

more non-human animals. Our solution must not introduce further harm, or introduce as little harm as possible, to the animals we have already negatively impacted.

The second leading cause of extinction is, in fact, hunting.^{iv} As a result of us creating the problems we now face, we have a responsibility to ensure we do not further disadvantage non-human animal populations with our proposed solutions.

To regard the killing of more non-human animals as the solution to our difficulty is to ignore the fact that we are the reason we are currently facing a problem. Surely we could justify almost any course of action if we were permitted to be the cause of such dire predicaments in the first place. In an analogous manner, it is easy to justify striking someone in self-defense after having thrown one's own face into his or her fist. Simply identifying a problem is an insufficient justification to hunt. We must look at the impact of hunting, as well as at what precipitated the problem in the first place. If we find we are the cause of what threatens us, this alters, quite significantly I think, what constitutes a reasonable solution to the problem.

Aside from taking responsibility for being the cause of the problem that now requires a solution, it has been suggested that

[p]romoting hunting to maintain land-health is like promoting amateur surgery for human health. People sometimes require surgery, just as ecosystems sometimes require the culling of species. But human health would not generally improve if we made a sport of surgery. Amateur

^{iv} Ibid.

surgeons would remove the wrong tissues, tie up loose ends badly, cause infections, and leave bad scars. Amateur hunters tend to do analogous damage to ecosystems.^v

Therefore, sport hunting ought not to be viewed as a solution to the problems we face with superabundance or undesirable populations because (i) we are responsible for most problems we currently face and thus, must minimize the harm we introduce into the world; and (ii) even if this introduction of harm could be justified, it would be imprudent to allow sport hunting on the grounds that it provides us with social utility because we could best serve that purpose through allowing professionals to relocate or cull animal populations.

THE SECOND AMENDMENT OF THE UNITED STATES CONSTITUTION

Second, because the right to bear arms is built into the fabric of the U.S. political system through the Second Amendment of the United States Constitution, it is often argued that to prohibit one from owning and using guns for the purposes of hunting would be unconstitutional, or at least a violation of some sort of fundamental right.

That said, we do frequently set limits on the freedoms established by the Constitution. The First Amendment is regularly limited for the purpose of the greater social good. We of course, criticize such restrictions on free speech when, for example, these restrictions are designed to suppress political dissent or are designed solely or wholly to be paternalistic in nature.

^v Ibid., 154.

However, we do accept, and often without much resistance, restrictions on the First Amendment when others' well-being is at stake. To use a clichéd example, we cannot enter a crowded theatre and shout "fire." We accept this limitation on our freedom because we realize that others' rights to well-being can often serve as trumps against more trivial rights such as the ability to make a false, and potentially dangerous utterance, in public. Dworkin acknowledges this claim when he suggests

a right against the Government need not go so far as to say that the State is *never* justified in overriding that right. He might say, for example, that although citizens have a right to free speech, the Government may override that right when necessary to protect the rights of others, or to prevent a catastrophe, or even to obtain a clear and major public benefit.^{vi}

It might be better to not limit any freedoms at all, but in these instances there appears to be trade-offs, and ones we are willing to accept. Thomson has suggested that it "might be said that we do violate one or more of your rights [...] but that our act, though wrongful, is excusable."^{vii} It would be inconsistent to suggest that the rights guaranteed by one Amendment are so flexible that they can be overridden by concerns of social utility, while others are absolute and must, under no circumstance, be denied.

Thus, it appears that arguments concerned about the Second Amendment ignore the fact that we have an

^{vi} Ronald Dworkin, *Taking Rights Seriously* (Cambridge: Harvard University Press, 1977), 191.

^{vii} Judith Jarvis Thomson, *Rights, Restitution, & Risk: Essays in Moral Theory* (Cambridge, Harvard University Press, 1986), 52.

established precedence of overriding Constitutional guarantees when the good of many are at stake.

ON RISK AND RESPONSIBILITY

Thomson suggests that “it seems to [her] we do well to agree that rights are not all absolute: There are rights which can be infringed without being violated.”^{viii} In the remainder of this paper I advance this claim further, and suggest that the right to bear arms for the purpose of hunting is a right that can and should be infringed upon because of the risk it introduces into the lives of others.

In what follows, I shift the focus away from non-human animal rights to instead, the risk undertaken on behalf of others when one owns a gun for the purpose of hunting. In many respects, the remainder of this paper is about freedom, its value, and how responsibility for the exercising of that freedom ought to be regarded when it involves subjecting others to a risk of grave bodily harm.

Those who suggest that freedom is the embodiment of advantage—who ignore other aspects associated with well-being—might be said to be guilty of fetishizing freedom—of taking freedom to be the embodiment of advantage. After all, any conception of the morality of our actions or of justice must take into account the full picture. To fail to move beyond freedom as a good is too simplistic. This failure ignores both other aspects that comprise our well-being, as well as what freedom does for us. I posit that freedom is more often than not good because of the sorts of things it permits us to do, and only in very rare circumstances is it good in and of itself.

^{viii} Ibid., 54.

Arneson has suggested that to postulate that

freedom is of intrinsic moral importance and should sometimes be sought even at the expense of well-being is fetishistic, in much the same way that concentrating on means to freedom as though it were valuable in itself it thoughts by Sen to be fetishistic.^{ix}

I take there to be at least two distinct kinds of freedom. The first are freedoms that can be seen to be intrinsically good. These types of freedoms are few and far between. These freedoms can be said to be intrinsically good because they are fertile—they promote even more (quantity), greater forms of freedom (quality).^x These freedoms are the kinds of freedoms that without, one would suffer corrosive disadvantage—one would be unable to pursue other valuable states of being. I take something like the freedom of bodily health—to be free from violent assault—to be a paradigmatic example of a freedom that is intrinsically good. Even if freedom from violent assault did not increase

^{ix} Richard Arneson, “‘Good Enough’ is not Good Enough,” in *Capabilities Equality: Basic Issues and Problems*, edited by Alexander Kauffman (New York: Routledge, 2005), 34.

^x I have spoken about a similar subject in a different context before in C. A. Riddle, “Raking Capabilities,” in *Discussing Capabilities, Emotions and Values: A Cross-Cultural Perspective*, edited by Koji Nakatogawa, and Lidia de Tienda Palop (Sapporo: Key Word, 2015); C. A. Riddle, *Disability and Justice: The Capabilities Approach in Practice* (Lanham: Lexington Books / Rowman and Littlefield, 2014), 81-84; C. A. Riddle, “Well-Being and the Capability of Health,” *Topoi* 32, no. 2 (2013): 157-159. <http://dx.doi.org/10.1007/s11245-013-9167-x>; and C. A. Riddle, “Responsibility and Foundational Material Conditions,” *The American Journal of Bioethics* 11, no. 7 (2011): 53-55. <http://dx.doi.org/10.1080/15265161.2011.568578>

one's ability to secure other valuable freedoms or states of being, it would still be something that possesses worth.

Conversely, most freedoms tend to be only instrumentally good. Most freedoms involve preference satisfaction and are not necessarily good in and of themselves. The freedom of play tends to be an instrumental freedom. It is good because it allows individuals to simply satisfy the preferences they have. Certainly some basic level of leisure is necessarily, but the vast array of freedom we possess to decide what we do with our leisure time is not necessarily an intrinsic good. This freedom is instrumentally good because it allows us to satisfy preferences we have.

The important conclusion to draw from this distinction for the purposes of this argument is that we should never permit freedoms of the second variety—those freedoms that result in mere preference satisfaction—to come at the cost of the first type of freedoms—those freedoms that possess intrinsic worth.

I suggest that mere preference satisfaction should take a back seat to the more robust forms of freedom that can be seen as being good in and of themselves. To be clear, in what follows, I intend to demonstrate that the freedom to own a gun for the purposes of hunting is a freedom that possesses only instrumental worth, and ought to be restricted to secure the freedom of bodily health—a freedom with intrinsic worth. In other words, it is an insufficient justification for hunting to state that someone would be happy, or happier, if permitted to hunt. Satisfying preferences in this context by granting the freedom to own a gun comes at the cost of others' bodily health—a freedom with intrinsic worth.

If the argument appears too abstract thus far, let me begin to contextualize it. I suspect we tend to agree with my above claims in many contexts. Take the freedom to smoke for example. Individuals should be free to do as they wish, but we begin to limit this freedom once it begins to infringe upon others'. Now that we are aware of the dangers of second-hand smoke, we, in many public places throughout the United States, deny smokers the freedom to smoke. We deny them this right both for paternalistic reasons, but more of concern for this paper, because it puts others at risk. We take the right to be free from bodily injury (to not be forced to suffer from second-hand smoke) to be far more important than the right of an individual to smoke wherever they wish. Moreover, we take it to be the case that any restaurant, for example, that permits smoking, is acting irresponsibly and subjecting employees and customers to unnecessary risk. Importantly, we think both the smoker as well as the establishment permitting the smoking ought to be held responsible for the risk one is subjected to as a result of their exercising the freedom to smoke.

I will now offer another analogy to further reinforce this claim. Imagine the following scenario. You enter a restaurant one evening and are told that there are two and only two dishes being offered that night. You can order option *A*, an option that you would find satisfying. To prepare option *A*, the waiting staff would simply go back to the kitchen, place the order, and pick it up to deliver to your table. However, you could also order option *B*. To procure the ingredients for option *B*, the waiting staff must exit the rear of the restaurant and dive into hungry shark infested water, only to be put further at risk by angry poachers attempting to hunt the shark for fin soup. If you are honest with yourself, while option *A* would make you happy and you would enjoy your meal, it is the case that

you would be much happier with option *B*. Call this scenario, *the case of the endangered waiter*.

I hope that this example demonstrates that even though option *B* would make you happier, it would be wrong to proceed and order *B*, thereby endangering the waiting staff, simply to satisfy your mere preferences. After all, there is a perfectly good, albeit slightly less satisfying option, that does not put anyone at grave risk. Anyone who insisted on ordering *B* would be reckless and selfish.

Just as in the smoking example above, I suspect that not only should we call into question your decision to order *B* if you chose to do so, but that we should also be critical of the restaurant that provided you with the option to endanger others in the first place. In other words, not only would it be wrong for you to order *B* to satisfy your preferences and consequently endanger the waiting staff, but it would be wrong for the restaurant to permit you to be in such a position to willingly endanger another.

I take hunting to be similar to the case of the endangered waiter. Certainly there are other leisure activities one would be free to pursue if hunting were forbidden. While it may very well be the case that one would derive less satisfaction from the available alternatives, others would not be subjected to the potential of violent assault as a result of your chosen leisure activity. As a result of owning a gun for the purposes of hunting, one is leaving open the option of that gun being stolen and used by another to harm someone.

Another example of similar reasoning can be found in Nozick's *Anarchy, State, and Utopia*, when he states:

Suppose then that I enjoy swinging a baseball bat. It happens that in front of the only place to swing it stands a cow. Swinging the bat unfortunately would involve smashing the cow's head. But I wouldn't get fun from doing *that*; the pleasure comes from exercising my muscles, swinging well, and so on. It's unfortunate that as a side effect (not a means) of doing this, the animal's skull gets smashed. To be sure, I could forego swinging the bat, and instead bend down and touch my toes or do some other exercise. But this wouldn't be as enjoyable as swinging the bat; I won't get as much fun, pleasure, or delight out of it.^{xi}

Although the harmed agent in Nozick's example is a non-human animal, I suspect we feel strongly that to make the choice to swing the bat rather than one of the alternatives would be wrong. Even when modified, the force of the example remains: "Suppose that it is not merely a question of foregoing today's special pleasure of bat swinging; suppose that each day the same situation arises with a different example"^{xii}.

However, the case of the endangered waiter is different than hunting for numerous reasons as well. First, the waiter has voluntarily subjected him or herself to the risk associated with you potentially ordering option *B*. In many respects, the waiter might be said to bear at least partial responsibility for any harm that befalls him or her because of the choices he or she has made. Conversely, individuals who are subjected to violent assault from

^{xi} Robert Nozick, *Anarchy, State, and Utopia* (New York, Basic Books, 1974), 37.

^{xii} Ibid.

stolen firearms have not agreed to be subjected to this risk—they are innocent.

That said, I don't think this difference negatively impacts the force of the example, and on the contrary, I suspect it supports it. Even if the waiter were not especially risk averse and lacked the foresight to realize the potential harm he or she could have tacitly agreed to, we would still think it would be wrong for the restaurant to prey on this fact and permit customers to endanger the waiting staff. Moreover, even if he or she should be held partly responsible for any harm that could come his or her way, I suspect we still arrive at the conclusion that it would be wrong to choose option *B* when there was an alternative that would still be satisfactory and not subject anyone to the possibility of death or serious bodily harm.

Second, the purpose of a restaurant is not to protect waiting staff from harm, but is instead, to provide satisfactory meals to customers. It may very well be the case that restaurants ought not subject their staff to preventable harm, but this is a side constraint on the realization of serving food and turning a profit. Government's however, often implement policy with the sole or primary purpose of protecting citizens from harm. We take the government to be responsible for our well-being, and if we are permitted to be subjected to avoidable harm, we question the institutional arrangements that allowed this harm to be introduced. In this sense, the case of the endangered waiter might seem too distinct.

Yet again however, I suspect this difference supports the prohibition of owning a gun for hunting more than it undermines the argument. Perhaps obviously, because one of the main purposes of the Government is to protect its citizens, it should have an even stronger responsibility than

the restaurant to avoid the introduction of harm. If it is wrong for a restaurant to permit a choice that introduces harm, it should be considered even more egregious for a State to do so.

In short, it is impermissible to make a choice or choices to satisfy mere preferences that subject other people to grave bodily injury. Furthermore, it is impermissible for those in a position to regulate these sorts of choices to permit one to voluntarily endanger another. In the context of gun control and the ethics of hunting, it is impermissible to choose to hunt because of the potential harm that could be introduced to others, and it is also impermissible for the Government to permit people to make the choice to hunt and thereby introduce the possibility of harm to other, *innocent*,^{xiii} people.

CONCLUDING REMARKS

Therefore, what I have suggested is that hunting ought not to be permitted, and not because of its impact on those animals that are hunted, but because of the risk other humans are subjected to as a result of some being permitted to own guns for mere preference satisfaction. What matters

^{xiii} I place emphasis on “innocent” here because we do regularly engage in activity to satisfy preferences that subject others to risk. If we take the choice to drive an automobile to be one that satisfies mere preferences, we can acknowledge that such a choice subjects many other people to the potential of harm. That said, the choices to hunt or to bear arms are relatively unique choices because of the potential for bystanders to be harmed. Most automobile accidents involve injury to other automobile operators. Very few accidents involve harm befalling pedestrians. In this sense, those who are subjected to the risk associated with being in an automobile are only those who have agreed to be placed at risk. Most people harmed by guns from hunters are not hunters, but are instead, people who have not agreed to the potential for harm that could befall them as a result of another owning a gun.

most is human flourishing, and desire satisfaction ought to be relegated to a secondary goal.^{xiv} In conclusion, we should not permit the owning of guns for the purpose of hunting because it introduces unnecessary harm into the lives of others.

^{xiv} Richard J. Arneson, "Human Flourishing Versus Desire Satisfaction," *Social Philosophy and Policy Foundation* 16, no. 1 (1999): 142. <http://dx.doi.org/10.1017/cbo9780511570704.006>